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FROM: James Russell

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ENVIR. APPEALS BOARD

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Page 2

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October 12, 2007

Via Telecopy and U.S. Mail

(202-233-0121)

Ms. Eureka Durr

Clerk of the Environmental Appeals Board

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, N.W.

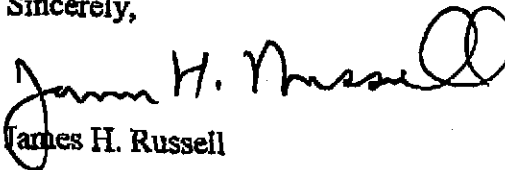
Washington, DC 20640

Re: Christian County Generation, LLC, PSD Appeal No. 07-01

Dear Ms. Durr:

As I mentioned to you a minute ago by phone, with reference to today's letter from Illinois EPA (attached), Permittee requests that the oral argument scheduled for October 17 go forward. We ask that the allotted time for argument be re-allocated by the Board fairly among the parties present. Thank you.

Sincerely,


James H. Russell

JHR:cg

P.S. Judge Reich just kindly telephoned me, based on my conversation with you, and I orally made the same request of him.

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October 12, 2007
Page 2

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ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

October 12, 2007

Ms. Eureka Durr
 Clerk of the Board
 U.S. Environmental Protection Agency
 Environmental Appeals Board
 1341 G Street NW, Suite 600
 Washington, D.C. 20005

Re: Christian County Generation, LLC
 PSD Appeal No. 07-01

Dear Ms. Durr:

Earlier this week, I informed you that I tentatively planned to appear at oral argument scheduled by the Environmental Appeals Board for October 17, 2007, in the above-captioned matter. However, I also qualified my commitment by noting that certain events might nonetheless impede my ability to attend the proceeding on behalf of my client, the Illinois Environmental Protection Agency ("Illinois EPA"). At this time, I must regrettably inform you that circumstances do not appear to permit me to fulfill my earlier commitment to participate in next week's oral argument.

Some historical background might be helpful in explaining my dilemma. In Illinois, both the state's constitution and common law recognize the Illinois Attorney General's Office ("AGO") as being the legal officer of the State in all matters in which the State of Illinois is the real party in interest. This authority extends to representation of the Governor's agencies, including the Illinois EPA, in various lawsuits before state and federal courts, as well as enforcement actions brought before our Pollution Control Board ("PCB"). The AGO has traditionally asserted the same prerogative in permit appeals brought before the state PCB and the Environmental Appeals Board. However, legal representation before these latter two tribunals have been routinely handled by attorneys for the Illinois EPA pursuant to special appointments granted by the AGO. For the last several years, these appointments have been issued to individual Illinois EPA attorneys for a one-year term, expiring at the end of each fiscal year (i.e., June 30th), and extend to administrative matters before these tribunals generally, as opposed to appointments provided on a case-specific basis.

For whatever reason, it has not been uncommon for the AGO's issuance of legal appointments to lag behind a fiscal year's passage. For example, the appointments granted to my colleagues and me at the Illinois EPA for the 2006 fiscal year were dated August 11, 2006. This year proved no different, as several weeks initially went by before a formal inquiry by Illinois EPA's senior management was made to the AGO about the

Ms. Eureka Durr
October 12, 2007
Page 2

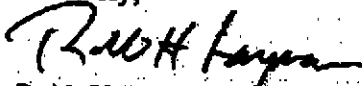
status of the appointments. Staff attorneys were informed at that time that the delays in the appointments were due merely to administrative oversight and that they would still be forthcoming, as in past years. Legal representation by Illinois EPA attorneys in both pending and new matters continued before the Board, as evidenced by the filing of my appearance and the Illinois EPA's formal Response Brief in this matter.¹

As of this date, my colleagues and I have not received formal appointment letters from the AGO. Recent attempts to secure assurances that our representation in pending matters could proceed without the threat of ethical implications (i.e., unauthorized practice of law) have been unavailing. And as recently as this week, my senior management informed my colleagues and me that the decision as to whether to continue representation in pending cases was now best left to one's own judgment until such time that the situation is resolved. Unfortunately, I cannot speculate as to when that might occur, although meetings between senior officials of the Illinois EPA and AGO are reportedly scheduled for as early as next week. With my conscience as my only guide, and notwithstanding my earnest desire to participate in oral argument, I am reluctant to continue with my representation of my client in this matter at this immediate time. Absent a continuance, the Board may have no other option than to proceed without the Illinois EPA's participation in the oral argument.

I should note that neither I nor my client's senior management have any reason to believe that the AGO considers our prior filings with the Board in this case to constitute an *ultra vires* act or to be otherwise improper. As mentioned, I have represented my client in this proceeding based on representations that the delay in our appointments was the result of an administrative oversight. Accordingly, I would urge that the Board withhold any judgment concerning the propriety of my client's past filings until such time that either the AGO or its duly appointed representative has reason to address the matter in the near future.

If you require any further information or assistance in this regard, you may reach me at (217) 524-9137.

Sincerely,



Robb H. Layman
Assistant Counsel
Illinois EPA

¹ Based on the same understanding, my colleague, Sally Carter, filed her appearance and a Partial Response to Petition in *In re: ConocoPhillips Wood River Refinery*, PSD Appeal No. 07-02. While the remainder of the Response is not due until October 29, 2007, Ms. Carter will apprise the Board, in advance of the prescribed date, of her ability to timely file the response in light of the situation described above.

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